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OF THE

United States

OCTOBER TERM, 1956

122, ~~123~~, 124, 125

Nos. ~~993, 994, 995, 996~~

THE IVANHOE IRRIGATION DISTRICT, vs. *Plaintiff and Appellant,* ALL PARTIES AND PERSONS, etc., *Defendants,* THE STATE OF CALIFORNIA, *Defendant and Appellant,* COURTNEY McCRACKEN, *Defendant and Appellee.*	No. 993
THE MADERA IRRIGATION DISTRICT, vs. *Plaintiff and Appellant,* ALL PERSONS, etc., *Defendants,* THE STATE OF CALIFORNIA, *Defendant and Appellant,* CARL F. STEINER, et al., *Defendants and Appellees.*	No. 994
PHILLIP and JANE E. ALBONICO, vs. *Plaintiffs and Appellees,* THE MADERA IRRIGATION DISTRICT, *Defendant and Appellant.*	No. 995
THE SANTA BARBARA COUNTY WATER AGENCY, vs. *Plaintiff and Appellant,* ALL PARTIES AND PERSONS, etc., *Defendants,* MAURICE A. BALAAM, et al., *Defendants and Appellees.*	No. 996

BRIEF OPPOSING MOTION TO DISMISS APPEAL.

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Subject Index

	Page
I. The judgments rest solely on federal bases	2
A. The validity of a statute of the United States has been drawn into question and the decisions are against its validity	2
1. How the water limitation was held to deny due process	3
2. How the water limitation was held to violate equal protection	5
3. The references to state laws merely explain the mode of water service in absence of the limitation	6
4. The failure to mention relevant state laws demonstrates reliance on federal grounds exclusively	7
5. The state law itself refers to federal law and its interpretation raises federal rather than state questions	8
B. The opinions expressly negative reliance on possible non-federal grounds of decision	9
C. The holdings of invalidity of the provisions concerning water delivery and payment and title to facilities are based exclusively on the interpretation of federal law	10
II. The federal questions are substantial	13
III. Conclusion	16

Table of Authorities Cited

Cases

	Pages
Carmichael v. Southern Coal Co., 301 U.S. 495 (1937)	6 n. 3
County of L.A. v. Southern Cal. Tel. Co., 32 Cal. 2d 378, 196 P. 2d 773 (1948)	5
Dyer v. Sims, 341 U.S. 22 (1951)	2
Flournoy v. Wiener, 321 U.S. 253 (1944)	8
Lynch v. New York, 293 U.S. 52 (1934)	2
Manford v. Singh, 40 Cal. App. 700, 181 Pac. 844 (1919)	5 n. 2
Merchants Nat. Bank v. Escondido Irr. Dist., 144 Cal. 329, 77 Pac. 937 (1904)	4 n. 2
Minnesota v. National Tea, 309 U.S. 551 (1940)	2, 5 n. 2, 6
Nebraska v. Wyoming, 325 U.S. 589 (1945)	15
Smith v. Kansas City Title & Trust Co., 255 U.S. 180 (1921)	8
Standard Oil of California v. Johnson, 316 U.S. 481 (1942)	8
United States v. Carmack, 329 U.S. 230 (1946)	4
United States v. Gerlach Live Stock Co., 339 U.S. 725 (1950)	4, 14, 15
Wehrle v. Board of W. & P. Commrs., 211 Cal. 70, 293 Pac. 67 (1930)	8

United States Constitution

United States Constitution, "Supremacy Clause", Article VI, clause 2	6, 9

United States Statutes

Act of July 2, 1956, 70 Stat. 483 (1956), 43 U.S.C.A. Section 485h-1 (1956 Supp.)	14
Omnibus Adjustment Act of 1926, Section 46, 44 Stat. 649 (1926), 43 U.S.C. Section 423e (1952)	2, 3, 6

Pages

Reclamation Act of 1902, Section 8, 32 Stat. 390 (1902), 43 U.S.C. Sections 372, 383 (1952) 11, 12, 14, 15

Reclamation Project Act of 1939:
Section 9(c), 53 Stat. 1194 (1939), 43 U.S.C. Section 485h(c) (1952) ..... 12 n. 4
Section 9(e), 53 Stat. 1196 (1939), 43 U.S.C. Section 485h(e) (1952) ..... 12 n. 4, 14

Tucker Act, 28 U.S.C. Section 1491 (1952) 4

California Constitution

California Constitution:
Article I, Section 11 5
Article I, Section 13 ..... 4 n. 2
Article XI, Section 8 ..... 7, 8

California Water Code

California Water Code:
Section 22250 ..... 6, 7
Section 23195 ..... 6, 8
Section 23196(b) 12
Section 23197 ..... 6, 8
Section 23200 ..... 6, 7, 8
Section 30000 et seq. 7

Law Review Note

Note, Supreme Court Review of State Interpretations of Federal Law Incorporated by Reference, 66 Harv. L. Rev. 1498 (1953) 9

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BRIEF OPPOSING MOTION TO DISMISS APPEAL.

Pursuant to rule 16, paragraph 3, the appellants herein oppose the appellees' motion to dismiss. This opposition

is based on the grounds that these appeals present only federal questions and that each federal question is substantial.

I. THE JUDGMENTS REST SOLELY ON FEDERAL BASES.

Asserting that the decisions of the state court are based on an adequate non-federal ground, the appellees contend that therefore these decisions are not reviewable by this court (Mo. Dis. pp. 8-10). The familiar cases stating and illustrating the rule are cited but reference to the cited cases will show that the rule relied on has no application to the present situation. Here the only statutes whose validity has been drawn into question are federal statutes and hence there can be no adequate non-federal ground of decision. By way of illustration contrast with the instant cases, *Lynch v. New York*, 293 U.S. 52 (1934), and *Minnesota v. National Tea*, 309 U.S. 551 (1940), cited by appellees. Both of the cited cases involved the validity of *state* statutes which were questioned on both state and federal constitutional grounds. We submit that here whether the constitutional question is state or federal is immaterial in determining reviewability because the questioned statute is a federal one (cf. *Dyer v. Sims*, 341 U.S. 22, 28-30 (1951)).

A. The validity of a statute of the United States has been drawn into question and the decisions are against its validity.

The federal statute primarily attacked is the 160 acre water limitation in section 46 of the *Omnibus Adjustment Act of 1926* (App. p. 237).* The appellees argue that the

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*The references (App. p. ....) are to the Appendices to the Jurisdictional Statement.

decisions appealed from merely interpret state law to hold this statute inapplicable (Mo. Dis. p. 14n.).

Any doubt that the California court held section 46 unconstitutional is removed, however, by that court's description of its own holding. Thus in the *Madera* case relying on *Ivanhoe*, it holds the water limitation ineffective because the "large landowners" would be "denied thereby due process and equal protection of the laws" (App. p. 145). And similarly in the *Santa Barbara* case: ". . . the excess land provisions . . . are inapplicable and if not declared to be so would deprive landowners of the member units of property rights without due process of law and constitute a denial of equal protection of the laws" (App. p. 221). (See also the *Albonico* case, App. p. 183).

Examination of the *Ivanhoe* opinion shows that in reaching its conclusion that the limitation is inapplicable because unconstitutional the court relies only on federal grounds. We shall first discuss due process and thereafter equal protection.

1. How the water limitation was held to deny due process.

The first step is to postulate a "trust" involving rights of the beneficiaries in unappropriated water. A part of this postulate is that the limitation violates the rights of the beneficiaries (App. pp. 29-33). Another part is that the United States is a trustee because it "steps into the shoes of the state to administer the trust . . ." and that the "state may not therefore lawfully dispossess itself . . . of the trust under which the title is held" (App. p. 31). Later this is amplified by holding: ". . . the federal law [§ 46, *supra*] could be applicable only on the theory

that the United States is the owner absolute of the domestic waters of the state with the right to the use thereof freed of any trust relationship . . . such a theory is untenable . . ." (App. p. 51; see also App. pp. 43, 45).[1]

The trust is the means whereby the California court would deprive the United States of the capacity to acquire the rights that court believes it must have to accomplish a federal purpose (cf. App. p. 45). Thus the trust is used to create a state restriction on the federal power of eminent domain. Such a restriction conflicts not only with this court's construction of that federal power (*United States v. Carmack*, 329 U.S. 230, 236-239 (1946)), but also with the holding of this court in *United States v. Gerlach Live Stock Co.*, 339 U.S. 725, 739 (1950) that in the Central Valley Project the United States was properly exercising that power and that the *Tucker Act* remedies are available.

The next steps in the California court's reasoning are simple: since the limitation is inconsistent with the trust, and since the United States cannot extinguish the trust rights in accordance with due process through the exercise of the power of eminent domain, the limitation must fail (App. pp. 45, 47, 48). Whether the due process referred to is that in the state constitution[2] or in the United States

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[1]Our many points of disagreement with the merits of this postulate have been asserted in our Petitions for Rehearing included in the record herewith.

[2]The appellees rely on the state constitution (Mo. Dis. p. 14), but the only reference to the state constitutional provision in the opinions is in a quotation from *Merchants Nat. Bank v. Escondido Irr. Dist.*, 144 Cal. 329, 77 Pac. 937 (1904) (App. pp. 20-30). The due process clause in the California Constitution (Art. I, § 13) "is mani-

constitution is immaterial. The reason due process is violated, in the court's view, is not that it has a meaning in the state constitution over and beyond that in the federal constitution, but rather because the United States lacks the power to proceed in accordance with due process, i.e., by exercising its power of eminent domain.

2. How the water limitation was held to violate equal protection.

The California court also holds that the limitation denies "equal protection" (App. pp. 47, 48-49, 145, 221). The appellees argue that these holdings are actually holdings that the limitation violates California Constitution Art. I, § 11 (Mo. Dis. p. 14).

The vice of this argument is that no state constitutional provision of this sort is anywhere mentioned in the opinions. There is no "equal protection" clause *eo nomine* in the California Constitution. Thus when the California court refers to "equal protection" it must be talking about the federal constitution. The California court has said heretofore that California Constitution Art. I, § 11, is "similar" to the equal protection clause of the Fourteenth Amendment (*County of L.A. v. Southern Cal. Tel. Co.*, 32 Cal. 2d 378, 388, 389, 196 P. 2d 773, 780, 781 (1948).) The fact that in the instant decisions it referred only to its own prior decisions on the state constitution thus demonstrates only error in applying the equal protection clause,

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festly in scope and purpose identical with said provision [the Fourteenth Amendment] of the federal constitution" (*Manford v. Singh*, 40 Cal. App. 700, 701, 181 Pac. 844 (1919). Contrast the situation in New York as described by this court in *Minnesota v. National Tea*, 309 U.S. 551, 556-557 (1940).

not that a state ground was relied on.[3] In this case it is clear that the question is federal and federal only because the federal constitution alone has been described, and the element of ambiguity due to the mention of both state and federal constitutions (as in *Minnesota v. National Tea, supra*) is absent.

Indeed to hold otherwise would be to hold that in plain violation of the Supremacy Clause (Art. VI, cl. 2) the California court tested the validity of federal law by reference to a state constitution.

3. The references to state laws merely explain the mode of water service in absence of the limitation.

The only points at which the state statutes are even mentioned in the whole discussion of the limitation is in the references to California Water Code sections 22250 and 23200 (App. pp. 46-47, 51, 252, 257; cf. Calif. Water Code §§ 23195 and 23197, App. pp. 251-252). Section 23200 provides in part:

> "All water, the right to the use of which is acquired by a district under any contract with the United States shall be distributed and apportioned by the district in accordance with the applicable acts of Congress, the rules and regulations of the Secretary of the Interior thereunder, and the provisions of the contract. . . ."

Only because of its immediately preceding holding that section 46 of the *Omnibus Adjustment Act of 1926* is unconstitutional, can the state court come to the conclu-

[3] To illustrate the error contrast the treatment of numerical distinctions by the California court (App. p. 49) and this court in *Carmichael v. Southern Coal Co.*, 301 U.S. 495, 510-511 (1937).

sion that section 46 is not an applicable act of Congress referred to in Water Code section 23200 (App. p. 51).

The same holding of unconstitutionality, of course, also explains the description of the effect of California Water Code section 22250 (App. pp. 46-47). This section prescribes a general rule for irrigation districts not cooperating with the United States requiring them to distribute water in proportion to the assessed value of land. The opinion says this rule is applicable to "both of the contracting parties" (App. p. 46), i.e., the United States as well as the district, and further that "no pertinent exceptions appear" (App. p. 47). Of course, the reason the California court does not find that the 160 acre water limitation is a pertinent exception is that it is about to hold the limitation unconstitutional.

4. The failure to mention relevant state laws demonstrates reliance on federal grounds exclusively.

Another indication that the California court relied only on federal grounds appears from its failure to discuss the special situations under state law in the *Santa Barbara* case. The appellees urge the decisions depend on California Water Code section 22250. Nevertheless, they describe the section correctly as a rule relating only to irrigation districts (Mo. Dis. pp. 12, 13). Section 22250 does not apply to the Santa Barbara County Water Agency (Jurisdictional Statement pp. 21, 35 n. 12); or to its member units which are county water districts (App. pp. 230-232) organized under the *County Water District Law* (Calif. Water Code §§ 30000 *et seq.*); or to its member unit, the City of Santa Barbara (App. pp. 232-233) which is a chartered city under California Constitution Article

XI, § 8. As a chartered city Santa Barbara has a large degree of control over its water supply as a "municipal affair" not subject to the general laws of the state (Calif. Const. Art. XI, § 8 (par. 12); *Wehrle v. Board of W. & P. Commrs.*, 211 Cal. 70, 73, 293 Pac. 67, 68 (1930)).

If the California court had been merely interpreting state law all of the state laws relevant to each of these special situations would have necessarily been considered. Instead, these other laws are not even mentioned and the Santa Barbara contracts both master and member unit are invalidated merely on the authority of the irrigation district cases (App. pp. 211, 221, 224). This is a compelling indication that only federal grounds were relied on, i.e., the grounds of invalidity of the 160 acre water limitation above described.

5. The state law itself refers to federal law and its interpretation raises federal rather than state questions.

Inspection of California Water Code section 23200 and its companion sections 23195 and 23197 shows that we have here another instance in which state law refers to federal law. In these circumstances we submit that the interpretation of state law therefore involves federal questions as demonstrated in *Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180, 201-202 (1921), *Standard Oil of California v. Johnson*, 316 U.S. 481 (1942) and *Flournoy v. Wiener*, 321 U.S. 253 (1944). These state statutes do not merely adopt a federal rule in an area where the federal rule would not otherwise be operative; they are the means whereby the state is enabling itself to take advantage of the substantial federal benefits available under the United States reclamation program by conforming with the federal con-

ditions. It is a meaningless verbalism to say that all the state court did was interpret the state law to see which federal laws applied and therefore raised only a state question (Mo. Dis. p. 14 n.). The reasons *why* the federal law is held inapplicable are the determinant factor in ascertaining reviewability because this state law is one blended with federal law to form one organism. The state has sought uniformity with the federal law. This uniformity can be achieved only if there is one final arbiter to ascertain the validity of the cooperative effort (Note, *Supreme Court Review of State Interpretations of Federal Law Incorporated by Reference*, 66 Harv. L. Rev. 1498, 1502 (1953)).

If review is not permissible here a unique situation will be created: the state courts will have become the final authority on the question of whether a federal law is operative within the state. We believe that this is just the sort of paradox sought to be avoided by the Supremacy Clause and which has been avoided by this court in its opinions above cited. We urge that the rule discernible from those cases should be applied again to permit review here.

B. The opinions expressly negative reliance on possible non-federal grounds of decision.

Although the California Supreme Court could have rested its judgment holding the contracts illegal on state law grounds, examination of its opinions shows that it did not do so.

In the *Ivanhoe* and *Madera* cases the California Supreme Court disapproved the holdings of the trial courts

that the contracts were invalid on a number of purely state law grounds. As examples, the trial courts held that the contracts prohibit changes of the district's boundaries as authorized by state law (*Ivanhoe:* Clerk's Transcript p. 306; *Madera:* App. p. 174); and that the contracts never received the approval of the district's voters required by state law because of asserted defects in the notices of election (*Ivanhoe:* Clerk's Transcript pp. 245-246, 283, 307-308; *Madera:* App. pp. 160-161). The Supreme Court of California, in the judgments being appealed from, either rejected such state law grounds outright, or expressly refused to base its decisions on them (App. pp. 62, 153-154). In the *Santa Barbara* case, attacks by the appellees based on state law were all repudiated by both the trial court and the California Supreme Court (App. pp. 207-209; 211-221; 222).

C. The holdings of invalidity of the provisions concerning water delivery and payment and title to facilities are based exclusively on the interpretation of federal law.

In holding the contracts illegal because they do not provide for district repayment of a specific construction obligation for the main project water delivery facilities, and because they provide for retention by the United States of title to all project property, the California Supreme Court relied upon what it described as "the relationship of debtor and creditor . . . established in the record" (App. p. 39) and "the debtor-creditor nature of the contract" (App. p. 52; see also p. 37). It is plain from what the California Court said that it had federal law, not state law, in mind as the origin of this "debtor-creditor" relationship:

> "We have heretofore declared the debtor-creditor nature of the contract in question. In arriving at that conclusion it was considered that *applicable federal law* requires that the contract specify a specific amount of money to be repaid by the district by installments, within 40 years; that this is an obligation for repayment of the cost of construction of storage and delivery works, and that the payment by the district be credited against this obligation" (App. p. 52, emphasis added).

Nowhere in its opinions did the California Supreme Court cite or refer in any way to state law as providing the incidents of the "debtor-creditor" relationship upon which that Court predicated its conclusions on the validity of these aspects of the contracts. This omission was not inadvertent; there is no state law on the subject.

The conclusion of invalidity was again reached by the California Court when it viewed the contracts' water delivery provisions as placing the Untied States in the position of a water purveyor furnishing water at a price Here, too, the ground of decision was federal law. The California Court quoted the language of section 8 of the *Reclamation Act of 1902* which states that the Secretary of the Interior shall proceed in conformity with state law relating to the control, appropriation, use or distribution of water used in irrigation (App. pp. 55-56, 236), and then said:

> "It may fairly be said that the foregoing remains in full force; that it controls the operations of the Department of the Interior so far as federal law is concerned, and that under the controlling state law, the furnishing of water to consumers by a utility must

> be subject to and be in conformity with certain rules and regulations established by or under the authority of the Constitution and the statutes of the state" (App. pp. 55-56).

From this excerpt, it is clear that the California Court depended on federal law, section 8 of the *Reclamation Act of 1902*, as authority for the conclusion that the contract had to conform to state public utility law in order to be valid. There is no intimation in any of the opinions in these cases that state law, of itself, makes execution of such a contract beyond the powers of the districts. Of course there could not be, since state law expressly authorizes districts to contract with the Uinted States for a water supply as well as for other specified purposes (Calif. Wat. Code § 23196(b), App. p. 251).

The final doubt raised by the California Court as to the legality of the contracts' water delivery provisions was also predicated on federal rather than state grounds. The Court stated:

> "If this contract were construed as imposing upon the district and the landowners therein a burden under which they may suffer a loss of water rights at the discretion of the United States, such a construction would be contrary to well established constitutional principles and protections" (App. p. 56; see also pp. 64, 145, 221).

Two questions are raised by this conclusion: First, do the water delivery provisions of the contracts[4] author-

[4]The Ivanhoe and Madera contracts are based on section 9(e) of the Reclamation Project Act of 1939 (App. p. 245). The Santa Barbara contracts are based both on section 9(e) and section 9(c)(2) of the same act (App. pp. 241-242).

ize cessation of water delivery at the end of the contract term? Second, assuming that federal law and the contracts do authorize cessation of delivery, is this "contrary to well established constitutional principles and protections" (App. p. 56)? Neither question can be or was decided by reference to state law. Federal questions, *i.e.* the interpretation and constitutionality of federal statutes are exclusively involved.

II. THE FEDERAL QUESTIONS ARE SUBSTANTIAL.

In their motion to dismiss the appellees make no effort to challenge our assertion that the issue of the constitutionality of the 160-acre water limitation is of overwhelming importance. Undoubtedly they realize the futility of even trying to deny it in the face of these facts: (1) the United States Supreme Court has never passed on the constitutionality of this basic provision of federal reclamation law; (2) there is a current conflict of state supreme court decisions on this issue; and (3) the manner in which this issue is decided will have a profound effect on the entire western reclamation program.

The appellees, however, have at least attempted to minimize the importance of the questions on the provisions of the contract governing water delivery and payment and title to facilities. This they have done, first, by denying that these questions are federal in nature. We have already demonstrated herein that the California Supreme Court did not rest its holdings on these matters on any independent non-federal ground.

The second method employed by the appellees was to rely upon the 1956 federal statute supplementing section 9(e) of the *Reclamation Project Act of 1939* (Act of July 2, 1956, App. pp. 246-249). The appellees argue that because the statute authorizes the modification of existing water delivery contracts to include "repayment and other provisions in the contracts quite different from those in the contracts before the court below and this Court" (Mo. Dis. pp. 17-18), the present contract provisions "do not present a continuing problem" (*id.* p. 18). Modification of existing contracts under this 1956 statute, as the appellees correctly point out (*id.* p. 17), is discretionary with the contracting district. There is nothing in the record indicating that the type of modification the appellees have in mind is desired by the districts involved in this litigation or the some 34 other districts who have entered into 9(e) contracts (Jurisdictional Statement, p. 32). The fact is that renegotiation and alteration of the present contracts could very well subject the districts to annual costs for water much higher than their present obligation. Hence, this 1956 statute cannot be used to deflate the obvious importance of these issues—issues which also have never before been considered by the United States Supreme Court.

Like the California Supreme Court, the appellees place heavy reliance on the decision in *United States v. Gerlach Live Stock Co.*, 339 U.S. 725 (1950), as establishing that by virtue of section 8 of the *Reclamation Act of 1902*, federal law forbids the Secretary of the Interior from applying the 160-acre water limitation on reclamation project water deliveries in California (Mo. Dis. pp. 18-20). But

the *Gerlach* case held only that if property rights recognized under state law are taken by the United States in connection with the construction and operation of a federal reclamation project, the owner of the right is entitled to compensation. The *Gerlach* case did not even suggest, nor has any other case before those now being appealed, that section 8 of the *Reclamation Act of 1902* requires the United States to deliver water to those claiming rights under State law when to do so would be directly contrary to later, more specific federal statutes. We deny that section 8 has such an effect (See *Nebraska v. Wyoming*, 325 U.S. 589, 615 (1945). "We do not suggest that where Congress has provided a system of regulation for federal projects it must give way before an inconsistent state system"). The only ground on which the California court's interpretation of section 8 can be urged to be insubstantial is that it is so obviously wrong that it warrants a summary reversal.

CONCLUSION.

For the reasons stated herein it is urged that the motion to dismiss be denied and that this court enter an order noting probable jurisdiction.

Dated: June 24, 1957.

Respectfully submitted,

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